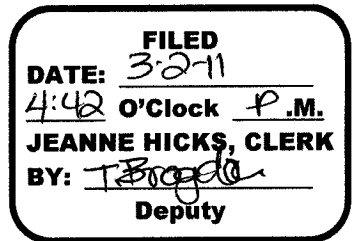


IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI



DIVISION PRO TEM B
HON. WARREN R. DARROW
CASE NO. V1300CR201080049

JEANNE HICKS, CLERK
BY: T. Brogdon/R. Hagen, Deputy Clerks
DATE: March 2, 2011

TITLE:
STATE OF ARIZONA,

(Plaintiff)

COUNSEL:
Yavapai County Attorney
Sheila Polk/Bill Hughes,
(via OnBase)
(For Plaintiff)

v.

JAMES ARTHUR RAY,

(Defendant)

Thomas K. Kelly,
(via electronic mail)
(Co-Counsel for Defendant)

Luis Li/Brad Brian/Truc Do/Miriam Seifter
MUNGER TOLLES & OLSON LLP,
(via electronic mail)
(Co-Counsel for Defendant, *Pro Hac Vice*)

HEARING ON:
TRIAL – Day 8

NATURE OF PROCEEDINGS

COURT REPORTER
Mina Hunt

START TIME: 9:00 a.m.
APPEARANCES:

Sheila Polk, Counsel for State
Bill Hughes, Co-Counsel for State
Detective Ross Diskin, Case Agent
James Arthur Ray, Defendant
Tom Kelly, Co-Counsel for Defendant
Luis Li, Co-Counsel for Defendant
Truc Do, Co-Counsel for Defendant
Miriam Seifter, Co-Counsel for Defendant
Victim Services Representative

State's Counsel, Detective Ross Diskin, Counsels for Defendant, Defendant and Victim Witness Advocate are present in the Courtroom. The Jury is not present.

Counsel for State renews their Motion to reconsider. Oral argument ensues.

Court advises the 404B Motion was handled on the terms given and is not reconsidering that ruling. The Court acknowledges there is an issue of causation. Court advises observations that are based on adequate foundation evidence would be admissible and general statements that try to characterize the whole event or post event must be avoided.

IT IS ORDERED denying the Motion to reconsider.

Defense Counsel requests the State to proffer what the witnesses will say. Oral argument ensues.

Court advises inappropriate testimony would include estimates of how many people were in medical distress. Court advises causation must be confined to what was actually observed, and in accordance with Rule 70(B).

Defense Counsel requests discussion of foundation outside the presence of the Jury.

Counsel for State requests the Court remind Defense Counsel that the opening statement is not time for

argument.

Counsel for State requests Defense Counsel be reminded that unless there is a good faith basis to believe exhibits shown during opening statements would be admitted, they should not be shown to the Jury.

Counsel for State advises several witnesses do not wish to appear on live TV. Court advises individual hearings will be held to address this issue.

Oral argument ensues regarding opening statements.

Court advises Counsel has to be able to frame the evidence, there was argument on both sides. Court addresses hearsay. The exhibit Defense Counsel is exhibiting has potential admissibility for being an exhibit or evidence offered not for the proof of the matter asserted. There is no way to give a 105 Limine instruction to a Jury before evidence is actually admitted. Discussion ensues. Defense advises they will be able to present the rest of their opening.

Court advises of the standard breaks.

Court and Counsel discuss correspondence received from a Juror.

IT IS ORDERED redacting the names and numbers within the correspondence.

Court addresses microphones at Counsel tables, releasing of exhibits to the media after admitted, and labels on the front of State's exhibits. The Court directs the State to remove labels from the front of exhibits.

Court and Counsel discuss exhibits to be presented and the exchange of anticipated witnesses.

Counsel for Defendant objects to an exhibit to be offered by Counsel for State indicating the cost of other seminars offered by JRI. Oral argument ensues. Counsel for Defendant stipulates to the cost of the spiritual warrior seminar.

Court advises the state of mind of participants in the sweat lodge may be relevant for what they did, if there is foundation for evidence geared to that, it would be admissible. **IT IS ORDERED** exhibit #205 in its form would not be admissible.

Oral argument regarding the cost of seminars ensues.

Court advises if there is an issue from a witness and the mental state of a witness that relates to finances and the amount paid, it could be relevant and will have to be addressed when the question arises.

~~~Recess~~~

At 10 53 a.m. Court reconvenes, all previously appearing parties and the Jury is present in the Courtroom.

The Court addresses the Jury regarding any admonition concerns and finds there are none.

Counsel for Defendant resumes opening statement.

Melissa Phillips is sworn and testifies.

Exhibits 199, 201 and 202 are admitted into evidence pursuant to stipulation of Counsel.

Melissa Phillips is reminded of the Rule of exclusion of witnesses and is excused for the noon recess.

The Jury is reminded of the admonition and excused for the noon recess.

~~~Lunch Recess~~~

At 1:35 p.m. Court reconvenes, all previously appearing parties and the Jury is present in the Courtroom.

Melissa Phillips resumes testimony.

Exhibit 137 is admitted into evidence pursuant to stipulation of Counsel.

Court and Counsel conduct sidebar discussion outside of the presence of the Jury on the record.

Exhibit 734 is offered and admitted into evidence without objection.

Exhibits 141 and 142 are admitted into evidence pursuant to stipulation of Counsel.

Court and Counsel conduct sidebar discussion outside of the presence of the Jury on the record.

The Jury is reminded of the admonition and excused for a recess. The Jury exits the Courtroom.

Melissa Phillips is reminded of the Rule for the exclusion of witnesses and excused for a recess. Melissa Phillips exits the Courtroom.

Counsel for Defendant requests the Court instruct Counsel for State on proper format for direct examination of a witness. Court trusts all Counsel to follow appropriate questioning procedures.

~~~Recess~~~

At 3:49 p.m. Court reconvenes, all previously appearing parties and the Jury is present in the Courtroom.

Melissa Phillips resumes testimony.

Exhibits 143, 144, 145, and 414 are admitted into evidence pursuant to stipulation of Counsel.

Melissa Phillips is reminded of the Rule of Exclusion for witnesses and excused for the evening recess. Melissa Phillips exits the Courtroom.

The Jury is reminded of the admonition and excused for the evening recess.

Court stands adjourned for the day.

**END TIME: 4:42 p.m.**

cc. Gallagher & Kennedy, P.C., Counsel for Shore Family (e)  
Murphy, Schmitt, Hathaway & Wilson, PLLC, Co-Counsel for Brown Family (e)  
Stone & Magnanini, Co-Counsel Brown Family (e)  
Aspey, Watkins & Diesel, PLLC, Counsel for Neuman Family (e)  
Steptoe & Johnson, Counsel for KPNX Broadcasting Company, TruTV and In Session (e)  
Perkins, Core, Brown & Bain, Counsel KTVK-TV (e)  
Division PTB (e)  
Victim Services (e)  
Court Administration  
Customer Service Supervisor, Verde